

FILED
SEP 26 2016

GLEN*

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

REX GARD,

* CIV 14-4023

Plaintiff,

vs.

* ORDER

BOB DOOLEY, Chief Warden, *
individually and in his official capacity; *
SUSAN JACOBS, Associate Warden, *
individually and in her official capacity; *
MURIEL NAMINGA, Laundry Supervisor, *
individually and in her official capacity; *
ANDRA GATES, Supervisor, DOH, *
individually and in his official capacity; *
KELLY SWANSON, Supervisor, DOH, *
individually and in her official capacity; *
JENIFER BEMBOOM, CBM Food Service, *
individually and in her official capacity; *
JOHN TREWIELLAR, CBM Food Service, *
individually and in his official capacity; *
BARRY SCHROETER, CBM Food Service, *
individually and in his official capacity; *
JENIFER STANWICK, Deputy Warden, *
individual and official capacity; *
REBECCA SCHEIFFER, Associate *
Warden, individual and official capacity; *
LELAND TJEERDSMA, Major, *
individual and official capacity; *
TRAVIS TJEERDSMA, Unit Staff, *
individual and official capacity; *
TAMMY DeJONG, Unit Staff, *
individual and official capacity; *
RANDY STEVENS, Property Officer, *
individual and official capacity; *
CORPORAL CROPPER, Corporal, *
individual and official capacity; *
RANDY MILNE, Corrections Officer, *
individual and official capacity; *
JESSICA LUKE, Office Staff, DOH, *

individual and official capacity;	*
DOC STAFF, unknown at this time,	*
individual and official capacity;	*
CBM FOOD SERVICES EMPLOYEES,	*
unknown at this time,	*
individual and official capacity,	*
Defendants.	*
	*

Magistrate Judge Duffy filed her Report and Recommendation in this case on March 4, 2016. The Plaintiff Rex Gard asked for numerous continuances which were granted and Mr. Gard then filed his Objection to the Report and Recommendation, Doc. 148, on August 3, 2016. The Court has reviewed the file including Plaintiff Gard's Objections and overrules those objections. The Court adopts the Report and Recommendation in full.

There is, as was recognized in the Report and Recommendation, some breakdown in communications and in some instances what could be considered negligence, but none of those things amount to deliberate indifference resulting in an Eighth Amendment violation. In addition, there were no personal or other constitutional violations showing claimed retaliation. As a result, the objections are overruled and the claims are dismissed with prejudice.

Plaintiff Gard's claims which were based on the Americans With Disabilities Act are not affected by either the Report and Recommendation or by this Order. Accordingly,

IT IS ORDERED:

1. That the Magistrate Judge's Report and Recommendation, Doc. 134, is ADOPTED by the Court.
2. That Plaintiff's Objections to the Report and Recommendation, Doc. 148, are DENIED.
3. That Defendants' Motion for Summary Judgment, Doc. 86, is granted in its entirety and each of Plaintiff Rex Gard's claims which are based upon 42 U.S.C. § 1983 are dismissed with prejudice.

4. That Plaintiff Gard's claims which are based upon the Americans with Disabilities Act are unaffected by this Order.

Dated this 26th day of September, 2016.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:



Deb Peter
DEPUTY